## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION CIVIL CASE NO. 3:09cv01

KENNETH HENI	DERSON,	)
	Plaintiff,	) )
	vs.	)
WELLS FARGO ASSOCIATION,	BANK, NATIONAL	) ) )
	Defendant.	) ) )

THIS MATTER is before the Court on the Memorandum and Recommendation of Magistrate Judge Dennis L. Howell [Doc. 15], filed April 14, 2009. Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, Magistrate Judge Howell was designated to consider the Defendant's Motion for Judgment on the Pleadings [Doc. 8] and to submit recommendations for its disposition. After the Defendant filed its motion, the Plaintiff filed his Motion to Amend. [Doc. 10]. The Magistrate Judge also considered that motion and submitted recommendations for its disposition, having found the motion to amend inextricably intertwined with the motion for judgment on the pleadings.

The Magistrate Judge filed a Memorandum and Recommendation in

which he recommended denying the motion to amend and granting in part the Defendant's motion for judgment on the pleadings.<sup>1</sup> The parties were advised that any objections to the Magistrate Judge's conclusions and recommendations were to be filed in writing within ten days of service of the Recommendation and that failure to file objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Doc. 15 at 22]. The period within which to file objections expired on May 1, 2009 and no objections to the Memorandum and Recommendation have been filed.

The Court has considered the motions, the responses thereto and the Magistrate Judge's Memorandum and Recommendation. The Court concludes that the Magistrate Judge's recommendation is supported by the facts, the record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion to Amend [Doc. 10] is hereby **DENIED**.

IT IS FURTHER ORDERED that the Defendant's Motion for

<sup>&</sup>lt;sup>1</sup>The Magistrate Judge recommended that Count IV of the Complaint be dismissed on the alternate ground of failure to state a claim upon which relief may be granted. The Plaintiff conceded this by failing to object to the Memorandum and Recommendation.

GRANTED and Counts I, II and III of the Complaint are hereby

DISMISSED WITH PREJUDICE but only to the extent that these claims are based on the Defendant's credit reporting activity and judgment thereon will be entered at the conclusion of the action. To the extent that the claims asserted in Counts I, II and III are based on any other grounds, the Defendant's Motion for Judgment on the Pleadings is DENIED, and the Plaintiff is allowed to proceed thereon;

IT IS FURTHER ORDERED that the Defendant's Motion for

Judgment on the Pleadings [Doc. 8] as to Count IV is hereby **DENIED** but

Defendant's Motion to Dismiss Count IV for failure to state a claim is

GRANTED and Count IV is thus hereby **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that on or before fourteen days of entry of this Order, the parties shall conduct an initial attorneys' conference and shall submit to the Court a Certificate of Initial Attorneys' Conference and proposed Pretrial Order and Case Management Plan within five days of such conference.

Signed: May 5, 2009

Martin Reidinger

United States District Judge